

COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

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STATE OF OHIO, :

Plaintiff. :

vs. :Case Number B1003262

RUBEN JORDAN, :Appeal Number C1100833

Defendant. :Volume IV of XI

- - -

TRANSCRIPT OF PROCEEDINGS

- - -

APPEARANCES:

Seth S. Tieger, Esq.

Megan E. Shanahan, Esq.

On behalf of the State of Ohio.

William P. Whalen, Jr., Esq.

Amy R. Williams, Esq.

On behalf of the Defendant.

BE IT REMEMBERED that upon the Jury

Trial of this cause, on January 19, 2011, before

the Honorable NADINE L. ALLEN, a judge of the

said court, the following proceedings were had,

to wit:

1 KAREEM GILBERT

Direct ExaminationPage 660, Line 10

2 Cross-ExaminationPage 702, Line 2

Cross-ExaminationPage 711, Line 1

3 Cross-ExaminationPage 714, Line 15

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1 PROCEEDINGS, January 19, 2011

2 BAILIFF: Court is back in session
3 for now. You can remain seated.

4 THE COURT: Did anybody call for
5 the witness?

6 BAILIFF: Yes, Your Honor.

7 THE COURT: So the witness isn't
8 here yet?

9 BAILIFF: Yes, sir, he's being
10 brought down.

11 MR. BRENNER: He's on his way.

12 THE COURT: Take this opportunity
13 to advise people who are observing or
14 anybody who's in this courtroom, that if
15 there are any cell phones in anyone's
16 possession that they all have to be off
17 completely; like off, not vibrating, not
18 on at all. There will be no texting, no
19 picture taking and no communication by
20 cell phone.

21 If you have those, dispose of them
22 right now, put them -- get them out of
23 your hands. They are not to be in your
24 physical possession or your hands. This
25 is a warning. The Court does have the

1 authority to remove cell phones from
2 persons who violate that rule. That will
3 be the first step. There are other steps
4 that can be taken, like contempt of
5 court, especially in a jury trial or a
6 charge of this nature. So that's the
7 warning.

8 Bring the defendant (sic) here to
9 the witness stand. I'll have him sworn
10 in before the jury. He may have a seat
11 there.

12 THE WITNESS: That's all I'm
13 supposed to tell him?

14 THE COURT: Sir, you don't have to
15 say anything right now. I'm not sure
16 what you just said. The next thing that
17 is going to happen is I'm going to have
18 you stand up and raise your right hand to
19 be sworn when the jury gets here.

20 (The jury entering the courtroom at
21 12:15 p.m.)

22 THE COURT: You may all be seated.
23 We are ready to resume with the -- good
24 afternoon, ladies and gentlemen of the
25 jury. We are ready to resume with the

1 State's next witness. You are calling?

2 MS. SHANAHAN: We are calling
3 Kareem Gilbert, Your Honor.

4 THE COURT: Sir, would you stand up
5 and raise your right hand to be sworn.
6 Raise your right hand.

7 KAREEM GILBERT,
8 having been first duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SHANAHAN:

12 Q. Kareem, please state and spell your
13 name for the record?

14 A. K-A-R-E-E-M, G-I-L-B-E-R-T.

15 Q. Okay. Kareem, you're in prison for
16 the murder of Brian Austin, correct?

17 A. Right.

18 Q. And you admitted to that murder and
19 plead guilty to that, correct?

20 A. Right.

21 Q. You did agree that you would do an
22 18-year sentence, and the State offered you that
23 as long as you would testify truthfully against
24 a person named Ruben Jordan, correct?

25 A. Right.

1 Q. And are you agreeing to come here
2 and testify truthfully against Ruben Jordan?

3 A. Right, but I'm telling the truth
4 right now, like, man, he ain't did none of that,
5 like. He ain't do none of that like.

6 THE COURT: Wait a minute. I'm
7 going to say right now, there is to be no
8 outbursts in the courtroom before this
9 jury. If you cannot control yourself,
10 you're going to be ordered to leave.
11 Now, continue -- sir, wait a minute.
12 Respond to the question first.

13 THE WITNESS: Okay.

14 THE COURT: Wait until there is a
15 question.

16 Q. Okay. Kareem, who is Ruben Jordan?

17 A. My father.

18 Q. Okay. And do you see him here in
19 the courtroom?

20 A. Right.

21 Q. Where is he?

22 A. Right there.

23 Q. Okay. And he's wearing the striped
24 shirt, correct?

25 A. Yeah.

1 Q. Okay. You were locked up from
2 February 31st (sic) of 2008 until May of 2010
3 without coming forward against your father,
4 correct?

5 A. Right.

6 Q. But your father was with you the
7 night that Victor Davis was murdered, correct?

8 A. Yeah. We was at his house watching
9 a football game.

10 Q. Okay. And ultimately, though, you
11 two left your father's house, right?

12 A. Nah, we was at his house watching a
13 game.

14 Q. Okay. Then what did you do?

15 A. Chill.

16 Q. Just chilled out there?

17 A. Right.

18 Q. I'm talking about the night Victor
19 was murdered, right, Halloween night of 2008?

20 A. Yeah, we stayed in and watched TV.

21 Q. Okay. Eventually you went down to
22 Republic and Elder Street that night, correct?

23 A. No.

24 Q. You never went down there?

25 A. No.

1 Q. Okay. Your father never went down
2 there?

3 A. No.

4 Q. Your father stayed in with you all
5 night?

6 A. Right.

7 Q. Through November 1st, the next day?

8 A. Right.

9 Q. You have to answer out loud. Okay.

10 MS. SHANAHAN: You Honor, at this
11 time I would like permission to treat the
12 witness as a hostile witness.

13 THE COURT: Do you object to that?

14 MR. WHALEN: Yes, I do, Your Honor.

15 THE COURT: How's that?

16 MR. WHALEN: Your Honor, he's their
17 witness. They brought him down from
18 prison, they've talked with him. He's
19 made an agreement -- he's come in and he
20 agrees he's going to tell the truth.

21 THE COURT: I understand that.

22 MR. WHALEN: Now, he's telling the
23 truth and they want to create a -- tell
24 him he's a hostile witness.

25 THE COURT: Well, you can lay the

1 groundwork for that, Counsel, for the
2 exception that you're attempting to do.

3 MS. SHANAHAN: Thank you, Your
4 Honor.

5 Q. Kareem, you have previously given
6 statements to the Court, correct, on May 17th of
7 2010, right?

8 A. Right.

9 Q. And you gave statements to the
10 police on May 17th of 2010, correct?

11 A. Right.

12 Q. And both of those times you
13 admitted that you and your father went down to
14 Republic Street, and that your father shot and
15 killed Victor Davis, correct?

16 A. Right, but I was just mad for real,
17 like, man. Like, he ain't never been there for
18 me, so I was just pissed off, man. He don't
19 even like guns. He's scared of guns.

20 Q. Okay. So you lied to the police
21 back in May of 2010, right?

22 A. Yeah.

23 Q. Okay. And as a matter of fact, as
24 recently as this past Monday I came to the jail,
25 Mr. Tieger came to the jail and met with you,

1 correct?

2 A. Right.

3 Q. And you lied to us then?

4 A. Right.

5 Q. Okay. Your father was never down

6 there on Republic?

7 A. Never.

8 Q. That whole night?

9 A. That whole night.

10 Q. And you weren't down there on

11 Republic that whole night?

12 A. Nope, I don't know what happened on

13 Republic. I don't even know who did that.

14 Q. Okay. You don't know who killed

15 Victor Davis?

16 A. Nope.

17 THE COURT: Okay.

18 MS. SHANAHAN: Your Honor, at this

19 time, I would like to introduce the

20 witness's prior statements for that,

21 because we were not anticipating this,

22 obviously. We need to get a laptop.

23 THE COURT: It's a surprise?

24 MS. SHANAHAN: It is.

25 THE COURT: And it's a reversal of

1 what you thought the testimony would be

2 --

3 MS. SHANAHAN: Oh, absolutely.

4 THE COURT: -- of this witness.

5 MS. SHANAHAN: Yes, ma'am.

6 THE COURT: And they're asking to
7 call him as if on cross, and there is an
8 exception in the Rules of Evidence. I'm
9 going to grant that.

10 MS. SHANAHAN: Thank you.

11 THE COURT: Overruled. I'm going
12 to overrule the objection. It is on the
13 record. Objection is overruled. The
14 defendant -- the witness, that is, may
15 answer all the questions.

16 MS. SHANAHAN: Okay. Do you have
17 the ability, ma'am, to play?

18 Your Honor, we need to just call
19 for a laptop to be brought in the room to
20 be able to play the witness's statement.

21 THE COURT: We'll do that now. So
22 take a recess or continue with something
23 else?

24 MS. SHANAHAN: It would be a good
25 time to take a recess and get the laptop.

1 THE COURT: All right. Well, then
2 I'm going to remove the jury at this
3 point.

4 MR. BRENNER: All rise for the
5 jury.

6 THE COURT: Wait a minute. I think
7 we can do it in a minutes. Apparently
8 Mine is going to work. I never know, so
9 I think it's going to be just -- do you
10 want to --

11 MR. TIEGER: Maybe just a
12 five-minute break to make sure it all
13 works.

14 THE COURT: At this time because of
15 the surprise, et cetera, there will be a
16 recess. I will advise the jury that I'm
17 sure it's tempting to discuss what just
18 happened. And you are under an
19 admonition, you cannot discuss what's
20 happening this morning or any other part
21 of this trial until it's time for you to
22 deliberate, and I'm gonna hope that you
23 will abide by that. Thank you very much.

24 (the jury leaving the courtroom at
25 12:23 p.m.)

1 MR. TIEGER: Judge, other things we
2 have, since I know everybody is here with
3 counsel, is that there is a transcript
4 that was made of his statement that we
5 would like to copy and let the jury
6 follow along with the tape with a
7 transcript.

8 THE COURT: All right. So, that
9 will take some time.

10 MR. TIEGER: So we'll need some
11 time to make 18 copies of that or so.

12 THE COURT: At this point, do you
13 want the defendant --

14 (Recess.)

15 THE COURT: Counsels, the reason I
16 wanted to come in, because I would like
17 for Mr. Issenmann -- is he already out
18 there? Do you want to put on the record
19 that since the defendant may be saying --
20 making comments that are against his own
21 best interest, his Fifth Amendment
22 Rights, I thought he should talk to a
23 lawyer first. And when he comes out, I
24 think -- can we put that on the record,
25 please, get everybody in here? Okay.

1 And I'm going to do it outside of the
2 presence of the jury. If I tell them
3 later, because they have to come in and
4 go back out, that's kind of chaotic a
5 little bit. Where is the witness? Can
6 we bring the witness in?

7 DEPUTY: Come on in. Just go up
8 there and stand.

9 THE COURT: All right. Back on the
10 record at this point, back on the matter
11 of State vs. Ruben Jordan, 1003262. He
12 can have a seat right there. That's
13 fine. I just want to put on the record
14 that the defendant -- I mean, the
15 witness -- since he's in that uniform --
16 I keep saying defendant, make this
17 correction for the record, this was a
18 witness also. The prosecution State's
19 witness, Mr. Kareem Gilbert, has recanted
20 or is saying something contrary to what
21 he said before, therefore, the State is
22 getting ready to treat him as a hostile
23 witness and cross-examine him. That
24 means that he has a Fifth Amendment
25 Rights to remain silent, and he does not

1 have to answer any questions that he
2 feels may incriminate or subject him to
3 perjury charges or falsification, or that
4 there was a deal about a sentence that he
5 was given. I'm not sure how this plays
6 into it. Not that it matters, I think it
7 is a possibility. Therefore, sir, do you
8 understand what your Fifth Amendment
9 rights are?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: No, you don't
12 understand them?

13 THE WITNESS: No.

14 THE COURT: That's why I brought in
15 your attorney, Mr. John Issenman. Did
16 you represent Mr. Kareem Gilbert at his
17 underlying --

18 THE WITNESS: Excuse me. Issenmann
19 ain't on my team no more. I don't know
20 who team he on. He ain't with me no
21 more.

22 THE COURT: He is here to discuss
23 with you -- he's not on your team, you
24 don't trust him?

25 THE WITNESS: No, I don't trust

1 him.

2 THE COURT: How about Dan Burke?
3 Is he still in the room? Sir, you need
4 to talk to an attorney about what your
5 Fifth Amendment rights are.

6 THE WITNESS: Okay.

7 THE COURT: With someone before
8 this trial resumes. Would you speak to
9 Mr. Dan Burke, who is one of the chief
10 attorneys in the public defender's
11 office?

12 MR. BURKE: Judge, I can't
13 represent him, or talk to him. I
14 represented a family member of the
15 Gilbert family in Judge Marsh's room
16 regarding a tampering and intimidation of
17 a witness regarding this case and this
18 trial. So, I cannot represent -- I
19 represented her in front of Judge Marsh,
20 so I cannot represent anybody in the
21 Gilbert family.

22 THE COURT: Well, then we will
23 reset this until somebody in the public
24 defender office can.

25 MR. BURKE: That's fine.

1 THE COURT: We are going to have
2 counsel come and speak to you. Is that
3 what you would like, sir?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Since you're telling me
6 you don't understand what I just said
7 about your Fifth Amendment Right to
8 remain silent and not answer questions.
9 I would rather have somebody come in and
10 get into depth with that with you
11 outside -- I just made my record, so I'm
12 going to get a defense attorney.

13 MR. BURKE: I'll find somebody,
14 Judge.

15 THE COURT: So, I would like him to
16 remain just right here in this corridor
17 so we can resume as soon as that is
18 concluded.

19 MR. TIEGER: Judge, as we said
20 earlier, our plan, basically, when he
21 takes the witness stand again, is we have
22 a prior tape-recorded statement that he
23 made, just to play that in front of the
24 jury and have them listen to what he
25 previously said, and then go on from

1 there.

2 THE COURT: And there may be other
3 questions for him.

4 MR. TIEGER: Yes, there would be
5 other questions after that.

6 THE COURT: Because I have
7 overruled the objection to treating him
8 as a hostile witness. The State has
9 established surprise. There is a change
10 in testimony and, therefore, he'll be
11 subject to cross-examination.

12 MR. TIEGER: Yes.

13 THE COURT: So with that, put
14 Mr. Kareem Gilbert, the witness, in the
15 hallway, and you're bringing somebody in?

16 MR. TIEGER: Judge, I don't know
17 whether the hallway -- because it might
18 take a while. I don't know whether they
19 --

20 THE COURT: You mean this Court?

21 MR. TIEGER: -- need to put him
22 back upstairs on six, because it might be
23 a little while.

24 THE COURT: Mr. Burke, how long
25 does it take to get somebody in here?

1 You getting somebody quickly? Mr. Burke,
2 do you think it might be 15 minutes?

3 MR. BURKE: I'm going to call right
4 now.

5 MR. ISSENMANN: Mr. Perkins
6 represented him initially in this case.

7 THE COURT: Is Mr. Perkins in the
8 office?

9 MR. ISSENMANN: I don't know that.
10 He's happy with Mr. Perkins talking to
11 him.

12 MR. TIEGER: Hey, Dan. Judge, the
13 problem with Mr. Perkins is that
14 Mr. Perkins and Mr. Wenke withdrew from
15 his case because they said he had an
16 ethical problem, so I don't think Mr.
17 Perkins could get involved anyway.

18 THE WITNESS: I fired him.

19 MR. TIEGER: Right. I mean, it's
20 going to be a problem.

21 THE COURT: He doesn't want
22 Perkins?

23 THE WITNESS: I want Perkins. No.

24 MR. BURKE: Judge, I'll get ahold
25 of Mr. Cutcher.

1 THE COURT: Mr. Tim Cutcher.

2 MR. BURKE: He's the felony staff
3 leader.

4 THE COURT: That's right.

5 MR. BURKE: So I'll call him.

6 THE COURT: Do you know Attorney
7 Tim Cutcher. Sir, Mr. Gilbert, do you
8 know Attorney Tim Cutcher?

9 THE WITNESS: No, I don't know none
10 of them.

11 THE COURT: You don't know him.
12 Fine, that's good, you don't know him.
13 He's a defense attorney. He will come
14 and talk to you.

15 MR. TIEGER: Judge, the problem is
16 going to be that by the time he gets over
17 here, he's going to have to be briefed on
18 what is going on.

19 THE COURT: So we'll take a
20 half-hour break.

21 MR. TIEGER: Security-wise, I think
22 it's probably better that he go upstairs
23 and we -- and resume and tell the jury
24 that it's going to be a little while.

25 THE COURT: Let us do this. Let's

1 take a recess. Take the witness back
2 upstairs. Officially, at this point,
3 parties, I'm going to -- I'm going to
4 make this an official recess, because I
5 don't want to rush it. I'm sending
6 Mr. Gilbert back upstairs. His lawyer
7 can come over. They can spend the time
8 they want to spend discussing this
9 situation.

10 MR. WHALEN: Can the Court send one
11 of their personnel to tell the jury that
12 it's going to be a little longer than
13 before?

14 THE COURT: As soon as we get this
15 resolved.

16 MS. WILLIAMS: I believe they want
17 to take the defendant back up also.

18 THE COURT: That's what I just
19 said. He's the witness.

20 MR. WHALEN: They are taking the
21 defendant upstairs, too.

22 THE COURT: That's fine, if they
23 want to do that for security.

24 MR. TIEGER: The problem is that
25 they absolutely have to be separated

1 upstairs.

2 THE COURT: Do they understand
3 that? Why are they both going upstairs?
4 Why are they both going upstairs? Why
5 does the defendant need to be going
6 upstairs?

7 DEPUTY: If the Court is not -- if
8 he needs to remain, Your Honor, we will
9 let him remain, but I thought the Court
10 was going to be in recess.

11 THE COURT: Will they be able to
12 have communication with each other?

13 DEPUTY: We'll separate them
14 upstairs.

15 THE COURT: Okay. You would prefer
16 to have them separated because of
17 security. You? While the jury --

18 MR. TIEGER: Yes, Judge.

19 THE COURT: While we're in recess.

20 MR. TIEGER: Judge, obviously, it's
21 a very explosive situation. There is no
22 more serious type of case that we are
23 doing. He's coming now and recanting to
24 extremes of prejudice. But for them to
25 be together would be dynamite at this

1 point, so they need to be totally
2 separated.

3 THE COURT: Of course, they will be
4 separated. So let's just take --
5 Mr. Gilbert doesn't need to be here for
6 this conversation at all, let's take him
7 out. He can leave right now and he will
8 be talking to an attorney shortly.
9 Meanwhile -- there. One of you can
10 remain here while that's going on. Leave
11 the defendant here. You would rather
12 take him upstairs?

13 MR. WHALEN: Your Honor --

14 DEPUTY: Whatever you want, ma'am.

15 MR. WHALEN: -- it's probably going
16 to be a little while, and it'd be in Mr.
17 Jordan's best interest if he went
18 upstairs, that way he could use the
19 restroom and --

20 THE DEFENDANT: Eat lunch. We
21 didn't eat lunch.

22 MR. WHALEN: He needs to eat lunch.

23 MR. TIEGER: I'm sure he's built up
24 an appetite having gone through all this.

25 THE COURT: Okay.

1 MR. TIEGER: Sorry, Judge.

2 THE COURT: Yeah, we'll retract
3 that.

4 MR. TIEGER: Yes.

5 THE COURT: At this point, there is
6 a -- I'm just concerned about the ability
7 for them to pass messages or although
8 they were having some --

9 DEPUTY: We'll have them in
10 separate cells. I'll call Deputy
11 Whitaker and let him know he's clear, so
12 he will be put up before we bring him.

13 THE COURT: They have to be
14 completely separated with no other means
15 to communicate through guards or other
16 prisoners or anybody else. I want a
17 complete lockdown with those two.

18 DEPUTY: Do the best we can, ma'am,
19 to work it out.

20 THE COURT: We can do that.

21 MR. TIEGER: And Ms. Shanahan and I
22 will remain available.

23 THE COURT: You can go back to
24 where you were.

25 MR. TIEGER: We'll give Mr. Brenner

1 and Ms. Smith our cell number.

2 THE COURT: It may be a while.

3 MR. TIEGER: Yes. Thank you.

4 THE COURT: It could be sometime
5 before we resume.

6 (Recess.)

7 THE COURT: We are not going to
8 bring -- before the jury comes out,
9 there are several motions before this
10 Court. Back on the matter of State vs.
11 Ruben Jordan, B1003262.

12 Mr. Whalen, do you have a motion
13 that you wanted to make at this time?

14 MR. WHALEN: I do, Your Honor.
15 Your Honor, I believe the Court should
16 have stopped the questioning of Kareem
17 Gilbert at the point in time he said no,
18 my daddy wasn't there.

19 But then when he was declared a
20 hostile witness, I think the Court had to
21 stop it and advise him of his Fifth
22 Amendment Rights, and that was not done
23 and he was allowed to continue to answer
24 some questions, so I'm going to ask that
25 his answers, especially after he was

1 declared a hostile witness, all be
2 stricken by the Court.

3 THE COURT: All right. Would you
4 like to respond? Anything else with
5 that?

6 MR. WHALEN: I'm sorry.
7 Preliminarily, I'm making this motion
8 with the assumption that when Mr. Gilbert
9 is brought back down he's going to take
10 the Fifth Amendment. And if the Court
11 strikes the way that I believe -- strikes
12 his testimony, then I don't believe the
13 State is able to play his CD of his prior
14 statements, and I'm going to ask that
15 they be excluded from bringing them in.

16 THE COURT: All right. Would you
17 like to respond?

18 MS. SHANAHAN: Your Honor, it would
19 be inappropriate and premature to do
20 either of those things. First of all,
21 the striking of the testimony is
22 inappropriate because this was all a
23 surprise. You know, we weren't sure how
24 far the defendant was going to go with
25 all of the stuff about being at home

1 overnight and with the football game and
2 all that, we had to lay the groundwork,
3 and we had to establish that actually
4 previously this is not what was said.

5 Now, at that point the proceedings
6 were appropriately stopped. They were
7 not allowed to go on beyond what they
8 should. And until we can establish that,
9 and even once we are questioning him as a
10 hostile witness, that doesn't mean the
11 Court has to stop him and have an
12 attorney come in and advise him of his
13 Fifth Amendment Rights. He didn't say
14 anything to incriminate himself. As a
15 matter of fact, he did just the opposite.

16 Secondly, the statement just so it
17 clearly comes in, this was part of a plea
18 agreement that he accepted. He agreed to
19 come here and testify truthfully based on
20 the statement that he gave the police.
21 And, now, it is a surprise to the
22 prosecution, State, that he is not
23 abiding by the plea agreement. He's
24 changing his entire story, and we have a
25 right to show the jury that this is not

1 what he had previously testified to,
2 what -- he was represented by counsel
3 then when he gave that statement. The
4 attorney was there when he gave that
5 statement. And basically, a large
6 portion of this case was based on that.

7 So we think that the jury has a
8 right to hear this.

9 MR. WHALEN: Your Honor, I don't
10 care what agreement that they had, or
11 what was involved or how surprised they
12 were. Once he is declared a hostile
13 witness, I think the Court -- the man has
14 a Fifth Amendment Constitutional Right,
15 and they have got to be protected. And
16 the only person to protect them at that
17 point in time is the Court. To say, hey,
18 wait a minute, you better have an
19 attorney here to protect those rights,
20 and that did not occur.

21 THE COURT: Thank you, Counsel.
22 There is two things that I want to
23 clarify. One, is that the State asked to
24 proceed, to treat him as a hostile
25 witness and you objected. At that point

1 I allowed the State to lay the groundwork
2 for the fact that they were surprised by
3 the blurting out of testimony, which, by
4 the way, wasn't in response to a question
5 that was asked of him. So, it was a
6 surprise. It wasn't elicited. I think
7 she was asking just preliminary, the
8 name, his address and his relationship.
9 So at that point he blurted out comments
10 that indicate he was going to recant what
11 he had been saying before. The State had
12 a right to lay the groundwork so that I
13 could rule on your motion.

14 At that point I said your objection
15 is overruled. Then I allowed the State
16 to treat him as if he's on cross and to
17 actually cross-examine the witness,
18 Kareem Gilbert, at which time we recessed
19 for him to be apprised of his Fifth
20 Amendment Rights, which has just
21 occurred.

22 And so for those reasons I'm
23 overruling your motion at this time, but
24 it is on the record. So we need to bring
25 in -- might as well bring in the

1 defendant.

2 MR. WHALEN: No, the defendant is
3 right here.

4 THE COURT: I'm sorry, the witness.
5 You know, the presence of a person in a
6 uniform whose not a defendant is
7 something that is causing me to flip into
8 stereotype. So, therefore -- but he is a
9 prosecuting witness. Are we bringing him
10 in, or are we bringing in the jury at
11 this time? We are going to bring in the
12 witness, Kareem Gilbert. You are going
13 to advise him of what has occurred. And
14 for the record --

15 MR. CUTCHER: Yes.

16 THE COURT: -- mr. Cutcher.
17 Mr. Tim Cutcher.

18 MR. CUTCHER: Yes, Your Honor.

19 THE COURT: You have come into this
20 courtroom as the attorney advising
21 Mr. Gilbert of his Fifth Amendment
22 Rights.

23 MR. CUTCHER: I have, Your Honor.
24 Mr. Gilbert has advised me, and I would
25 like to say this in his presence as well,

1 that he wishes to inform the Court that
2 he wishes to assert a Fifth Amendment
3 privilege not to testify.

4 THE COURT: And he may do that, but
5 he still must take the stand and assert
6 that on the record. So, at this time --
7 is there something else before we go any
8 further?

9 MR. WHALEN: No.

10 MR. TIEGER: No, Judge. Thank you.

11 THE COURT: All right. Bring in
12 the prosecuting witness, Kareem Gilbert.
13 You may have a seat here.

14 At this time we are going to have
15 this on the record. Counsel, did you
16 want to put something on the record?

17 MR. CUTCHER: Your Honor, the
18 witness has just entered the courtroom,
19 and I had a chance to meet with him
20 briefly upstairs. After talking to him,
21 he has advised me that he wanted me to
22 tell the Court that he wishes to assert
23 his Fifth Amendment privilege to not
24 testify. Is that right, sir?

25 THE WITNESS: Right.

1 THE COURT: All right. That's on
2 the record. At this point we are going
3 to bring in the jury for the next phase.

4 MR. CUTCHER: May I approach the
5 witness, Your Honor?

6 THE COURT: Yes.

7 (Tim Cutcher conferring with the
8 witness.)

9 THE COURT: And I believe you
10 wanted me to voir dire them about whether
11 or not they saw, observed -- or that's
12 before we even commence and go any
13 further?

14 (The jury entering the courtroom at
15 2:13 p.m.)

16 THE COURT: You may all be seated.
17 Good afternoon, I wanted to bring to your
18 attention that while you were on recess,
19 some of the jurors were in the hallways
20 and the corridors and had left the
21 confines of the jury room, and there is a
22 concern that maybe some of you may have
23 heard or seen either some of the
24 witnesses, some of the spectators, heard
25 fragments of conversation from detectives

1 or any of the parties involved here, and
2 we wanted to ask -- individually, I
3 wanted to ask the jury, as a group, did
4 anyone hear something that was connected
5 to this trial other than in this
6 courtroom.

7 THE JURY: No?

8 THE COURT: No. If you did, and
9 just can't remember that right now. I'm
10 suggesting you must disregard that as not
11 being evidence and cannot consider
12 anything you heard outside this
13 courtroom. Thank you.

14 State, ready to proceed?

15 MS. SHANAHAN: We are, Your Honor.

16 Your Honor, permission to play the
17 witness's taped statement from May 18th,
18 2010, and to provide the jury with
19 transcripts of that statement so that
20 they can follow along?

21 THE COURT: Any objection?

22 MR. WHALEN: I do, Your Honor. I
23 don't know that they have laid the
24 groundwork to play that at this point in
25 time.

1 THE COURT: Is that the only
2 objection?

3 MR. WHALEN: Yes.

4 THE COURT: Okay.

5 MS. SHANAHAN: I can ask some
6 preliminary questions, Your Honor.

7 THE COURT: All right. Go ahead.

8 MS. SHANAHAN: Thank you. I
9 apologize. It was my understanding
10 that's how we were proceeding.

11 BY MS. SHANAHAN:

12 Q. Kareem, you gave a statement
13 previously to the police, correct? You have to
14 answer yes or no?

15 A. Yes.

16 Q. And that statement was taped,
17 correct?

18 A. Yeah.

19 Q. And you've actually been provided
20 with copies of it in the past. It was made
21 available to you, correct?

22 A. Right.

23 Q. Okay. And it was recorded. Did
24 your attorney tell you it was also recorded to
25 an audio disc?

1 A. Right.

2 Q. So back on the date that you took a
3 plea deal in the Brian Austin murder, you did,
4 in fact, then go over to homicide and give the
5 police a taped statement, correct?

6 A. Yeah, but that was all a lie, like
7 I told them.

8 MS. SHANAHAN: Permission to play
9 the statement, please.

10 THE COURT: Yes. The objection is
11 overruled. You may play the tape.

12 MS. SHANAHAN: Could we also
13 provide the jury with transcripts.
14 Sometimes it's difficult to understand.

15 THE COURT: Yes. We have 18 copies
16 of that transcript, and so who's got
17 them?

18 MR. BRENNER: Right here, Your
19 Honor.

20 THE COURT: Okay. We are going
21 to -- does the court reporter have one
22 yet? Give one to the court reporter and
23 to each juror and to the parties.

24 MR. WHALEN: Your Honor, could we
25 approach?

1 THE COURT: So, right now we are
2 approaching with the jury. Okay.

3 (The following transpired at
4 sidebar as follows:)

5 THE COURT: Okay.

6 MR. WHALEN: I don't how he's
7 never -- he can claim his Fifth Amendment
8 at this point in time.

9 THE COURT: Um, why he claims the
10 Fifth Amendment for them to play the
11 tape. They can play that anyhow, just in
12 their case in chief. When she begins to
13 question him, he'll have to assert his
14 Fifth Amendment rights at that point.
15 She's not asking him questions right now.

16 MR. WHALEN: So, what you're saying
17 is if he has not said -- if he had not
18 said it was a lie, they could still play
19 the tape?

20 THE COURT: Right. Either way, I'm
21 saying it doesn't matter.

22 MR. WHALEN: Okay. Whether it's a
23 lie or truth, they are just playing a
24 tape of his own statement. This is a
25 statement, a recorded statement.

1 MR. TIEGER: Yes.

2 THE COURT: Okay.

3 MR. WHALEN: Okay.

4 (Sidebar concluded.)

5 BY MS. SHANAHAN:

6 Q. Kareem, you heard that whole
7 statement, right?

8 A. Yeah.

9 Q. You knew that a revolver was used
10 in Victor Davis's murder. You knew the
11 direction you all drove to get there, where you
12 parked, that your dad got the gun from the
13 African. Your dad was in the zone after the
14 murder, and you expect the jury to believe that
15 you made all that up?

16 A. Yeah. I made all that up. You
17 told me to give you something, and I told you
18 anything, to get a deal. Shit, I was facing
19 double life. Shit, I make anything up to get a
20 deal to come back home. Who wouldn't?

21 Q. And all those little details you
22 made up?

23 A. All of it.

24 Q. You did plead out, though, to Brian
25 Austin's homicide?

1 A. Yeah.

2 Q. Because you did actually commit
3 that murder?

4 A. Right.

5 Q. Okay. So the deal that you got on
6 that murder of Brian Austin, you made all this
7 stuff up for?

8 A. Yeah. Shit, I made everything up,
9 just to try to come back home. Why wouldn't I?

10 Q. Okay. But you murdered Brian
11 Austin because he hit you with a Subway
12 sandwich, right?

13 A. We were just fighting.

14 Q. You were fighting. And your dad
15 knew because you told your dad that you had
16 murdered Brian Austin, right?

17 A. Right.

18 Q. And you knew who Victor Davis was
19 and that he was the eyewitness to you murdering
20 Brian Austin, right?

21 A. I don't know how he knew. I don't
22 know -- you know what I mean?

23 Q. Do you know Victor Davis?

24 A. Yeah.

25 Q. You knew he was standing there with

1 Brian Austin outside the store, right?

2 A. Right.

3 Q. And you knew that he saw you pull
4 out the gun on Brian Austin, right?

5 A. Right.

6 Q. And he knew -- you knew that he saw
7 you shoot Brian Austin, right?

8 A. Right.

9 Q. Answer out loud.

10 A. Right.

11 Q. And you knew that he was still
12 walking around and could identify you as the
13 shooter in Brian Austin's murder, right?

14 A. Yeah.

15 Q. And you told your father that,
16 right?

17 A. I didn't tell my father, though. I
18 just told him about the murder I did.

19 Q. Okay. You never told your dad
20 that, Victor Davis?

21 A. I ain't tell him nothing about
22 Victor Davis.

23 Q. Okay. So the fact that your family
24 was harassing Victor Davis on the street,
25 according to Victor's son, that's not true?

1 A. Ain't none of Victor's son said it
2 was true.

3 Q. Okay. And your dad didn't know
4 that there was a witness to that Brian Austin
5 murder?

6 A. Nah, why would I tell him? I don't
7 even know. Shit, how he know?

8 Q. Two weeks -- less than two weeks
9 after you killed Brian Austin, Victor Davis ends
10 up dead, right?

11 A. Probably coincidence.

12 Q. Just a total coincidence, because
13 you were at home all night with your father the
14 night of the murder. Your dad was with you?

15 A. Right.

16 Q. Okay. Your dad was actually -- you
17 saw him because you were watching football all
18 night, right?

19 A. Right. We was watching the
20 Steelers game. Man, we don't know what go down.
21 A whole lot of murders go on downtown down here.

22 Q. But it wasn't like, you know, you
23 and your dad didn't see each other. You're
24 sitting next to each on the couch watching the
25 Steelers game, right? Answer out loud.

1 A. Right.

2 Q. Okay. And you all never left the
3 house the night of Victor Davis's homicide?

4 A. Right.

5 Q. Tell me about the conversation that
6 you had when you -- when you told your dad you
7 murdered Brian Austin, what was his response?

8 A. Shit, I don't remember. That shit
9 was too long ago. It was too long ago, so...

10 Q. Did he tell you to leave town?

11 A. Nah, I don't remember. I don't
12 know. I don't remember.

13 Q. Did he tell you -- did he ask you
14 where it happened?

15 A. Yeah.

16 Q. And did you tell him where it
17 happened?

18 A. I told him everything about the
19 murder, but I didn't tell him like nothing about
20 should I leave town, none of that. We didn't
21 discuss none of that.

22 Q. You did tell him everything about
23 the murder?

24 A. Yeah.

25 Q. And yet, you didn't tell him there

1 was an eyewitness to the murder?

2 A. Nah. Shit, we don't need to know
3 all that. I just told him what happened with me
4 and him. We ain't tell him who was around
5 there.

6 Q. What did you tell him exactly?

7 A. Shit, I just told him we got into a
8 fight and I shot him.

9 Q. Okay. And then what did you tell
10 him?

11 A. Shit, I left and ran.

12 Q. Okay. And then what did you tell
13 him?

14 A. That's it. Shit, what else -- what
15 do they got to do with it? They ain't got
16 nothing to do with the fight or nothing. I
17 ain't got no reason to bring none of them up
18 for.

19 Q. What was his reaction when you told
20 him that you murdered somebody and you were on
21 the run for it?

22 A. Shit, he was hard. He was hurt.
23 He was disappointed at me, shit.

24 Q. And so, what did he do?

25 A. We just talking, man. We didn't

1 say nothing. He was just talking about how I
2 screwed up and shit like, you know what I mean?

3 Q. Did he tell you what to do, give
4 you any advice?

5 A. Shit, he told me to turn myself in
6 and do the right thing.

7 Q. So, did your mom tell you that?

8 A. Yeah, all my family did.

9 Q. Okay.

10 A. Definitely, when they seen me on
11 the news, they told me to turn myself in, do the
12 right thing, man.

13 Q. And yet --

14 A. That's what I'm doing right now.
15 That's what I told you, man. I copped out to
16 what I did. I did the right thing, shit.

17 Q. Who murdered Victor Davis then?

18 A. Shit, I don't know who murdered
19 Victor Davis. Victor Davis was a drug dealer,
20 brother. Everybody downtown, bro, anybody could
21 have been down there. There's hell of murders
22 go on downtown all the time.

23 Q. But it certainly wasn't you and
24 your father, because you were at home?

25 A. Right.

1 Q. You indicated in your statement
2 that Victor Davis hung out at a motorcycle club.

3 A. Right.

4 Q. How'd you know that?

5 A. Shit, 'cause everybody hang out out
6 there, shit.

7 Q. What?

8 A. The bootleg. That's where the
9 bootlegs be at. They be over there by the
10 motorcycle club by Kroger. He be one of them,
11 man.

12 Q. So you knew that that's where you
13 could find Victor Davis, right, if you needed
14 him?

15 A. Shit, I call him.

16 Q. Okay.

17 A. I ain't actually know where, but I
18 just know the bootlegs be right there, so I had
19 his number. I ain't need to know where he was
20 at.

21 Q. Because he would come to you?

22 A. Yeah.

23 Q. But you knew he had hung out at the
24 motorcycle club, because that's where the
25 bootlegs --

1 A. Like I just said, man, shit, I
2 don't need to know where he was at. Bootleg,
3 that's the only two spots bootleg be at.

4 Q. Okay. And you knew that Victor was
5 a bootleg, right?

6 A. Right.

7 Q. And you told the police that he
8 hung out at the motorcycle club; is that right?

9 A. Shit, I told them bootlegs be over
10 there by the motorcycle club and over there.

11 Q. When you gave such great detail
12 about the night that you and your father went
13 and hunted down Victor Davis to murder him, you
14 said your father was on crack. Your father uses
15 crack, right? Yes or no?

16 A. Right.

17 Q. Okay. Was he on crack that night?

18 A. Nah, because, shit, he was with me.

19 Q. He was with you that whole night
20 but he wasn't on crack?

21 A. Man, listen, I just told you we was
22 watching a Steelers game, man, he ain't gonna be
23 smoking crack in front of me.

24 Q. He wouldn't smoke crack in front of
25 his kids?

1 A. Nah, man. He got a family and
2 everything over there, so why would he be doing
3 that in front of them, if he did do it? I mean,
4 shit, he wasn't around me doing it.

5 Q. He didn't smoke crack in front of
6 you?

7 A. Right.

8 Q. Then why did you tell the police
9 that he did?

10 A. Man, because they told me they
11 would give me a deal to let me come back home.
12 I told them anything that came to my mind right
13 then and there.

14 Q. You thought to give details that
15 had nothing to do with a murder like that, your
16 dad was a crackhead, even though you weren't
17 with him that night, he wasn't smoking crack?

18 A. Shit, he smoke crack, shit,
19 anything brother. I know he got crack cases on
20 his motherfucking record, so everything that I
21 was saying was gonna fill out every detail.

22 MS. SHANAHAN: One moment, please.

23 Nothing further at this time, Your Honor.

24 THE COURT: Nothing further. All
25 right. Counsel, you may cross.

1 MR. WHALEN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. WHALEN:

4 Q. Kareem, just so that I know some of
5 the terms that we are using here. You said
6 Victor Davis was a bootleg?

7 A. Yes.

8 Q. Bootleg is a person that has a car
9 and is not a taxi cab, but he acts like a taxi
10 cab, giving people rides for money, am I
11 correct?

12 A. Right. Excuse me. Whatever they
13 got, they can have money, drugs, anything, he'll
14 do it.

15 Q. Okay. Now, in your statement you
16 referred to Victor Davis doing X. Can you
17 explain what X -- X is Ecstasy, right?

18 A. Right.

19 Q. And he was known to be dealing in
20 Ecstasy?

21 A. Yeah, I bought some X from him. I
22 do X. Like, shit, he was selling it, that's how
23 I know he had it.

24 Q. After Brian was killed, you went to
25 your father's house?

1 A. I been out my father's house.

2 Q. Okay. And your father -- if you
3 told him about it, your father told you that you
4 had to turn yourself in?

5 A. Right, and do the right thing.

6 Q. Every day that you got up, he was
7 on you about turning yourself in?

8 A. Right.

9 Q. And, in fact, one day he left and
10 went to talk to an attorney about making the
11 arrangements for you to turn yourself in?

12 A. Right, right.

13 Q. And that was what he was telling
14 you you had to do, to do the right thing?

15 A. Yeah.

16 Q. Now, when you went to prison --
17 (Phone ringing.)

18 THE COURT: Phones have to be
19 turned off, please, immediately.

20 Ma'am, you have to leave the room.
21 Leave the courtroom.

22 UNIDENTIFIED SPEAKER: Yes, ma'am.
23 Sorry, I tried to turn it off. Sorry,
24 Judge.

25 THE COURT: Don't say anything,

1 ma'am, period. Move on.

2 Q. I'm gonna show you what's been
3 marked as Defendant's Exhibit C, and there is
4 three pieces of paper in here. Do you recognize
5 the handwriting on that?

6 A. Yeah, them my letters.

7 Q. Okay. When you say "your letters,"
8 your letters were being sent from prison?

9 A. Right.

10 Q. And they were sent to your father?

11 A. Right.

12 Q. And you wrote him letters on a
13 regular basis several times a week; am I
14 correct?

15 A. (Nods affirmatively.)

16 Q. And this particular letter, is this
17 true and accurate?

18 A. Yeah, that's everything. Yeah.

19 MR. WHALEN: Okay. Your Honor, I'm
20 gonna ask that Exhibit C be admitted into
21 evidence?

22 THE COURT: Be admitted. Do you
23 object if it's admitted?

24 MR. TIEGER: Judge, for the record,
25 we -- I don't know how long Mr. Whalen or

1 the defense has had these letters. We
2 were not made aware of these until just
3 several minutes ago, but we got a chance
4 to just look at them briefly while his
5 statement was being played, so...

6 THE COURT: Do you want me to
7 recess the jury while you make a motion
8 or something?

9 MR. TIEGER: No. Judge, I just
10 want to let you know that we had never
11 seen these or they were never disclosed.
12 We never heard of them until, again, just
13 today, sometime before --

14 THE COURT: Well, you're asking me
15 to admit them now. They can be marked as
16 an exhibit. And do you want to challenge
17 the authenticity of them?

18 MR. TIEGER: No. That's fine,
19 Judge. I just wanted the Court to be
20 aware that this is something that's a
21 surprise to us that we had not seen.

22 THE COURT: And you don't want a
23 continuance --

24 MR. TIEGER: No.

25 THE COURT: -- to consider these

1 letters?

2 MR. TIEGER: No. No.

3 THE COURT: So, therefore, I'm
4 going to admit them at this point, if
5 there is no objection.

6 (Defendant's Exhibit C received
7 into evidence.)

8 BY MR. WHALEN:

9 Q. Now in the letter on the first
10 page, it's dated September 16, 2010?

11 A. Right.

12 Q. And you state, "you know I don't
13 want to do this". What are you talking about?
14 What is it you don't want to do?

15 A. Testify.

16 Q. Okay. I'm going to show you what's
17 been marked as Defendant's Exhibit B. This is a
18 copy. It's not the original. Do you know what
19 that is?

20 A. Yeah, all them letters, we kept
21 writing constantly back, you know what I mean?
22 Just checking up on each other, seeing how each
23 other was doing.

24 Q. And is this an exact duplicate of
25 what you sent to your father --

1 A. Right.

2 Q. -- on June 3rd of 2010?

3 A. Right.

4 Q. And you authored it, right?

5 A. Right.

6 Q. You're the one that wrote it?

7 A. Right.

8 MR. WHALEN: Your Honor, I'll ask
9 this be admitted into evidence also.

10 THE COURT: Does the prosecution
11 object to the admission of this document?

12 MR. TIEGER: Judge, maybe we can
13 argue -- I mean, not really. I mean,
14 we -- again, this is something that we
15 have not seen again until just a few
16 moments ago.

17 THE COURT: Okay. So, there is a
18 surprise. Normally, there is -- you have
19 a right to a continuance or some other
20 sanction, and you don't want that.

21 MR. TIEGER: We briefly looked at
22 it, Judge, during the taped statement
23 being played, so we probably would want
24 to look at it overnight again, but other
25 than that --

1 THE COURT: I don't have to admit
2 it now. It's an exhibit.

3 MR. TIEGER: That's fine, Judge.

4 THE COURT: You can use it as an
5 exhibit. They want an opportunity to
6 challenge its admissibility.

7 MR. WHALEN: I can't read it unless
8 it's put into evidence.

9 MR. TIEGER: Judge, that's fine.
10 We can keep doing what he's doing, that's
11 not a problem.

12 THE COURT: You withdraw your
13 objection?

14 MR. TIEGER: Yes.

15 THE COURT: All right.

16 BY MR. WHALEN:

17 Q. If you'll look at -- on this
18 Exhibit B -- or Evidence B, about midway down it
19 says here, "I got a court date, plus I asked
20 you" -- can you read that part to me, what it
21 says? Right here. Start here.

22 A. I don't even really see it. You
23 got the regulars, the regular copy of it?

24 Q. No, I don't. But does this say, "I
25 got a court date, plus I asked you on" -- I

1 don't know what that word is -- "some real shit
2 like. Pop, take one of these body bags off my
3 back and this stress off my life;" is that
4 correct?

5 A. Right.

6 Q. And the body bags that you were
7 talking about you wanted him to take, you were
8 talking about being charged with the death of
9 Victor Davis; am I correct?

10 A. Right.

11 Q. In Exhibit C, in the end of the
12 third sentence you say "I know you didn't do
13 nothing."

14 A. Right.

15 Q. And you're talking about him being
16 charged with Victor Davis?

17 A. Right.

18 Q. Now you were asked about being
19 separated after this was over with, you told
20 them that you were afraid of your dad in that
21 statement we just heard.

22 A. Right.

23 Q. And that you didn't want to be near
24 him.

25 A. Right.

1 Q. After you gave them that statement
2 and you entered a plea on Austin's killing, you
3 were housed at the Justice Center, correct?

4 A. Right.

5 Q. And your father was arrested for
6 Victor Davis's killing?

7 A. Right.

8 Q. And you both were housed in the
9 Justice Center?

10 A. Right.

11 Q. And, in fact, you two were in the
12 same cell together for a while, were you not?

13 A. Right.

14 Q. For what period of time?

15 A. Shit, I don't know. I really
16 wasn't specific, though.

17 Q. But you two were in there, and you
18 had no fear about being with your father?

19 A. Nah.

20 MR. WHALEN: I have nothing else,
21 Your Honor.

22 THE COURT: Any redirect or
23 recross?

24 MS. SHANAHAN: Thank you.

25

1 CROSS-EXAMINATION

2 BY MS. SHANAHAN:

3 Q. On this Exhibit 1 that you just
4 referenced where it says, "I know you didn't do
5 nothing," then very heavily the next line is
6 scratched out. Can't read what's under there,
7 right?

8 A. Right.

9 Q. So it might have said: I went in
10 to ask myself, I know you didn't do nothing to
11 admit to what you did?

12 A. Possibility.

13 Q. Possibility?

14 MR. WHALEN: Your Honor, I'm going
15 to object and ask that be stricken.
16 Everything is possible.

17 THE COURT: Overruled. It's
18 cross-examination.

19 Q. So it's possible, because that's
20 scratched out so heavily you can't even see what
21 you were talking about when you wrote that, did
22 you?

23 A. Yeah.

24 Q. And as a matter of fact, when you
25 said you didn't want to testify because he's

1 your dad, right?

2 A. (Nods affirmatively.)

3 Q. It's not that he never killed
4 Victor Davis, it's because he's your father?

5 A. It ain't like, because, like, I
6 knew he was innocent. So, I mean, I didn't want
7 to keep lying on him like that. It was just
8 over. For real, it was over, grieving over the
9 years, for real, that's all.

10 Q. You pled out to this in May of
11 2010. You pled out to the Brian Austin murder
12 with the agreement you were going to come and
13 testify truthfully --

14 A. Right.

15 Q. -- right? And you certainly can
16 write letters to your father, right? You never
17 told any corrections officers up there that you
18 needed to talk to the Cincinnati Police to let
19 them know that your dad was innocent, did you?

20 A. Nah.

21 Q. You never, since you have been
22 brought back down here weeks ago, told anybody
23 in Cincinnati that your father was innocent
24 until you came and took the stand there, right?

25 A. I mean, shit --

1 Q. Yes or no?

2 A. You can't just tell anybody like
3 that, you don't know like who family you --
4 like, I could have just got --

5 Q. Yes or no?

6 A. Somebody could have just got -- I
7 could have got hurt in there telling anybody
8 like that. That's his business. I ain't
9 supposed to be talking about that. I'm just
10 talking so you want me to tell the truth when I
11 come to court.

12 Q. Yes or no, you did not tell anybody
13 specific since you have been here?

14 A. No.

15 Q. And as a matter of fact, you were
16 safe and secure in a room with only me, Mr.
17 Tieger and Jen Luke on Monday and you didn't
18 tell us, did you?

19 A. Shit, you all for the right? You
20 all ain't for the right.

21 Q. Yes or no?

22 A. No.

23 Q. As a matter of fact, you just asked
24 if you could get out sooner, right?

25 A. I don't remember that.

1 Q. Yeah. You asked your dad to take
2 one of these body bags off your hand because you
3 both did the murder together, didn't you?

4 A. No.

5 Q. You wanted him to take the body bag
6 off your hands because you knew he was the
7 trigger man that killed Victor Davis?

8 A. No.

9 Q. You've never told anybody, until
10 you took that stand, something different since
11 May 17th, have you?

12 A. Right.

13 MS. SHANAHAN: Nothing further.

14 THE COURT: Counsel?

15 CROSS-EXAMINATION

16 BY MR. WHALEN:

17 Q. Kareem, did you send a letter to
18 your dad and ask him to come up -- have me come
19 up to the prison?

20 A. Right.

21 Q. And I came up and you talked with
22 me?

23 A. Right.

24 MR. WHALEN: I have no other
25 questions.

1 THE COURT: At this point, anything
2 else from this witness?

3 MS. SHANAHAN: No, Your Honor.
4 Thank you.

5 THE COURT: You may step down. He
6 may be removed.

7 (Witness excused.)

8 THE COURT: And, at this point, are
9 you calling another witness? It is 3:30,
10 you have an opportunity to call another
11 witness?

12 MR. TIEGER: Judge, I don't know if
13 the jury needs a short break. Our last
14 witness would be Detective Luke. It
15 could be a while. I don't know how long
16 she'll be on the witness stand, so
17 however the Court wants to proceed.

18 THE COURT: I do know the jury
19 needs to leave before 4:30, because some
20 of their cars are parked in places they
21 need to -- there is some heads shaking
22 yes. I suppose we could go until 4:15,
23 but if it's in the middle of somebody's
24 testimony, that might not be a good thing
25 to do. So, you would rather just have

1 all the testimony and the cross at one
2 time, Counsels?

3 MR. TIEGER: Judge, if we can
4 approach. I know we were trying to
5 figure out the alleged snow situation,
6 so...

7 THE COURT: The alleged snow. Is
8 anybody concerned about the snow
9 tomorrow? Any jurors concerned about
10 that? They don't know that the three to
11 five to six inches of snow are arriving
12 on Thursday, according to the weather
13 channel and news cast. And so, we are
14 concerned about jurors having to come in
15 in severe snow, which the other day we
16 also did not have the jury trial.

17 Nobody is in favor of causing
18 citizens, who are voluntarily serving
19 their country and our democracy, to come
20 in in bad weather, so we're not going to
21 have a jury on Thursday. We are just
22 going to go ahead and believe the weather
23 report. We think Friday there will be
24 the State's witness. Now some jurors
25 look like they want to come in. I'm

1 trying to assess that situation. How
2 many jurors want to come in tomorrow and
3 fight the weather? And how many would
4 prefer not to have jury trial tomorrow?

5 okay. Since there are some who
6 don't want to, I'm just going to -- and
7 they may not make it. If we have a
8 problem where there is some jurors
9 missing, then this whole trial could be
10 mistried and that would be a real
11 problem, and we'd have to start over
12 again. And so, because of that, I'm
13 going to rule that we will not have a
14 jury trial on Thursday.

15 MR. WHALEN: Your Honor, if the
16 prosecution only has Officer Luke to
17 testify, the defense does not have that
18 many witnesses to put on, we could finish
19 by Friday.

20 THE COURT: We can finish on
21 Friday. On Friday you mean.

22 MR. WHALEN: Yes.

23 THE COURT: And because on Friday,
24 we'll be able to start at like 10:00 a.m.
25 We can start at 9:00 a.m. I don't have a

1 docket Friday. We are going to start
2 Friday at 9:00 a.m. instead of noon.
3 That means we'll get through all the
4 testimony, and we may even be having some
5 deliberation.

6 So, at this time, I'm going to
7 thank and -- well thank and excuse the
8 jury for the day, but I'm going to read
9 the admonition again in total because of
10 what has transpired here today, and
11 because the media is present and there
12 will be media reports about this. So,
13 all right then.

14 So, members of the jury, it is very
15 important that you be fair and attentive
16 throughout this trial. Do not discuss
17 this case among yourselves or with anyone
18 else. Do not permit anyone to discuss it
19 with you or in your presence. Do not --
20 even on elevators. You can even ask
21 people to stop talking about it on
22 elevators.

23 Do not form or express any opinion
24 on the case until it is finally submitted
25 to you. It may be difficult for you to

1 understand why you may not discuss this
2 case among yourself until it is finally
3 submitted to you, because it would be
4 unfair to discuss the case among
5 yourselves before you receive everything
6 necessary for your decisions.

7 You have not heard my instructions
8 of the law yet. I gave you some
9 preliminary instructions, but certainly
10 much more is left for you to be told.
11 You should explain this rule prohibiting
12 discussion of the case to your family and
13 friends. And, of course, when the trial
14 is over, you are released from this
15 instruction.

16 Do not talk with the attorneys, the
17 parties or witnesses during the trial.
18 Likewise, participants in a trial must
19 not talk with you. If anyone should
20 attempt to discuss the case with you,
21 report the incident to the Court or to
22 the bailiff immediately. You may not
23 investigate or attempt to obtain
24 additional information on this case
25 outside the courtroom. It's highly

1 improper for any one of you to attempt to
2 do so. You are instructed not to read or
3 view or listen to any report in the
4 newspaper, radio or television on the
5 subject of this trial. Do not permit
6 anyone to read or comment upon them to
7 you in your presence. Such reports may
8 be incomplete and are sometimes
9 inaccurate. You may only consider and
10 decide this case upon evidence received
11 at the trial. If you acquire any
12 information from an outside source, you
13 must report it.

14 And, again, that's sufficient at
15 this point. I have advised the jury of
16 what their duties are, and you are
17 adjourned until 9:00 here on Friday
18 morning. Thank you very much.

19 (The jury leaving the courtroom at
20 3:32 p.m.)

21 (Proceedings continued in progress
22 until January 21, 2011.)

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